

# **APPROPRIATE ROLE OF THE CONTRACTOR SUPPORTING THE GOVERNMENT**

## **FINDINGS and RECOMMENDATIONS**

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**Acquisition Advisory Panel**

These are preliminary/draft findings and recommendations and have not been approved by the Acquisition Advisory Panel except as otherwise annotated

**August 10, 2006**



# Finding 1

- Several developments have led Federal agencies to increase the use of contractors as service providers.
  - Limitations on the number of authorized FTE positions
  - Unavailability of certain capabilities and expertise among Federal employees
  - Desire for operational flexibility
  - Need for “surge capacity”

Adopted 8/10/06



# Finding 2

- The existence of the “blended” or “multi-sector” workforce, where contractors are co-located and work side-by-side with federal managers and staff, has blurred the lines between:
  - Functions that were considered governmental and those that were considered commercial
  - Personal and non-personal services

Adopted 8/10/06



# Finding 3

- Agencies need to retain core functional capabilities that allow them to:
  - Properly perform their missions
  - Provide adequate oversight of agency functions performed by contractors.

Adopted 8/10/06



# Finding 4

- Some agencies have had difficulty in determining strategically which functions need to stay within government and those that may be performed by contractors.

Adopted 8/10/06



# Finding 5

- The term “Inherently Governmental” is inconsistently applied across government agencies.

Adopted 8/10/06



# Finding 6

- Contractors are increasingly performing functions previously done by civil servants.
- The degree of use and functions performed appear to vary widely both within agencies and among agencies.
- There is no clear and consistent government-wide information in this area.

Adopted 8/10/06



# Finding 7

- There is a need to assure that the increase in contractor involvement in agency activities does not undermine the integrity of the Government's decision making processes.

Adopted 8/10/06





# Finding 8

- The increase in the use of contractors to perform functions that in the past were performed by Federal employees, coupled with increased consolidation in many sectors of the contractor community, has increased the potential for organizational conflicts of interest.

Adopted 8/10/06



# Finding 9

- There are numerous statutory and regulatory provisions governing the activities of Federal employees that are designed to protect the integrity of the government's decision-making process.
  - Recent incidents involving current/former civil servants were adequately dealt with by existing laws and processes. The Panel has not seen evidence that additional laws or regulations governing civil servant conduct are needed at this time.

Updated 7/21/2006

**Adopted 8/10/06**



# Finding 10

- Most of the statutory and regulatory provisions that apply to federal employees do not apply to contractor employees, even when they are performing similar functions.

Updated 7/21/2006

Adopted 8/10/06



# Finding 11

- A blanket application of the government's ethics provisions to contractor personnel raises issues in:
  - Cost
  - Enforcement
  - Management direction

Adopted 8/10/06



# Finding 12

- As the extent of service contracting has grown, the current ban on personal services contracts (PSC) has created two unfortunate situations.
  - In some cases people have taken steps to avoid entering into PSC by creating cumbersome and difficult processes, which often causes the management of those contracts to be inefficient.
  - In other cases people have simply ignored the PSC ban in an effort to improve the effectiveness of their contract management.

Updated 8/10/2006

Adopted 8/10/06



# Recommendation 1

- While recognizing that contractors are, and will continue to be, essential to and highly integrated into the operation of the Federal Government, the Government must ensure that core functions are performed by civil servants. Updated 8/10/2006

Tabled 8/10/06



# Recommendation 2

- OFPP should refine the current definition of “Inherently Governmental” to reflect the concept of core functions.

Updated 8/10/2006

Tabled 8/10/06



# Recommendation 3

- In order to reduce artificial restrictions and maximize effective and efficient service, Congress should relax the current prohibitions on Personal Services.
  - Within the scope of these types of contracts, the Government should be allowed to direct a service contractor's workforce on the substance of the work and/or task performed.
  - Prohibitions on Government involvement in supervisory activities (e.g. hiring, approval of leave, promotion or performance ratings, etc.) should remain in place.

Updated 8/10/2006

Adopted 8/10/06





# Recommendation 4

- OFPP should provide specific policy guidance which defines where, to what extent, under which circumstances, and how agencies may procure personal services.

Updated 8/10/2006

Adopted 8/10/06



# Recommendation 5

- The FAR Council should review existing rules and regulations, and to the extent necessary, create new, uniform, government-wide policy and clauses dealing with two types of potential conflicts of interest:
  - Organizational Conflicts of Interest
  - Personal Conflicts of Interest
- The Policy should explicitly address tools the Government may employ if either type of Conflicts of Interest occur. (see word document)



# Recommendation 6

- In order to provide expertise to the Federal Government free of the potential for organizational conflicts of interest, Congress should consider creating a class of Federally Chartered Corporations. Such Corporations would be privately owned and operated.
  - These entities could either be for profit or non-profit and would be permitted only one customer the Federal Government.

Withdrawn 8/10/06



# Recommendation 7

- OFPP should conduct a review to determine what additional requirements need to be levied on contractors, their employees, subcontractors and other associates in order to provide adequate assurance that government contractors will perform the government's business in an ethical manner.

Updated 8/10/2006 see Word document

